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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,848

09/12/2003

Andrew W. Moehlenbrock

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7590

12/28/2006

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/28/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/661,848

Applicant(s)

MOEHLENBROCK ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 10 and 14 in the Amendment filed October 18, 2006 (Amdt. C) have been received and considered by Examiner.

### ***REPEATED REJECTIONS***

#### ***Claim Rejections - 35 USC § 103***

2. The 35 U.S.C. 103 rejection of claims 1-6 and 8-17 made of record in paragraph 4 of the previous Office Action mailed July 27, 2006 has been repeated for the reasons previously made of record: the silicone-coated microporous film taught by Antoon, Jr. is free of particulate filler (col. 3, lines 14-17).

### ***Response to Arguments***

3. Applicant's arguments presented on pages 6-7 of Amdt. C regarding the 35 U.S.C. 103 rejection of claims 1-6 and 8-17 have been fully considered but are not persuasive.

In regard to Applicant's argument that the microporous layer of Forte contains a filler, the rejection of record proposes replacing the composition of the microporous layer of Forte with the silicone-coated microporous film taught by Antoon, Jr.

Applicant's argument regarding Antoon, Jr. on page 6 of Amdt. C does not address the rejection of record because the rejection of record proposes replacing the composition of the microporous layer of Forte with the silicone-coated microporous film taught by Antoon, Jr., not replacing the microporous layer of Forte with the microporous oriented film of Antoon, Jr.

Applicant argues that Antoon, Jr. cannot be combined with Forte since "Antoon, Jr. describes his silicone-coated microporous film as being substantially *impermeable* to the flow of

Art Unit: 1772

O<sub>2</sub> and CO<sub>2</sub> (col. 2, lines 4-5...)”, but Antoon, Jr. only teaches that the cellophane film is “substantially impermeable to the flow of O<sub>2</sub> and CO<sub>2</sub>” at col. 2, lines 4-5. Furthermore, Antoon, Jr. teaches that the silicone-coated microporous film is water vapor permeable (col. 3, lines 14-17), and Forte teaches that water vapor is a gas “most commonly used to demonstrate a film’s breathability” (col. 1, lines 16-20), so one of ordinary skill in the art would have been encouraged to replace the water vapor permeable silicone-coated microporous film of Antoon, Jr. with the water vapor permeable microporous layer of Forte since the microporous films of both patents are water vapor permeable. The rejection of record is based on this reasoning, yet Applicant has not addressed this basis for rejection in Amdt. C. Paragraph 4 of Office Action mailed July 27, 2006.

### *Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1772


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
12/20/06

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12/20/06